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*Counsel for Lead Plaintiff Movant Raj Grandhi
and Proposed Lead Counsel for the Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**CITY OF ROSEVILLE EMPLOYEES'
RETIREMENT SYSTEM, Individually and
on Behalf of All Others Similarly Situated,**

Plaintiff,

V.

ALIGN TECHNOLOGY, INC., JOSEPH M.
HOGAN and JOHN F. MORICI

Defendants

Case No. 20-cv-02897-MMC

**NOTICE OF MOTION AND MOTION OF RAJ
GRANDHI FOR APPOINTMENT AS LEAD
PLAINTIFF AND APPROVAL OF HIS
SELECTION OF LEAD COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

CLASS ACTION

Judge: Hon. Maxine M. Chesney
Courtroom: 7 – 19th Floor

TO BE DETERMINED ON THE PAPERS
UNLESS OTHERWISE ORDERED PURSUANT
TO GENERAL ORDERS 72-2 & 73

1 **NOTICE OF MOTION AND MOTION**

2 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

3 **PLEASE TAKE NOTICE** that Lead Plaintiff movant Raj Grandhi (“Grandhi” or “Movant”),
4 by and through his undersigned counsel, hereby moves this Court, pursuant to Section 21D(a)(3)(B)
5 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended
6 by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for entry of an Order: (1)
7 appointing Mr. Grandhi as Lead Plaintiff in this Action; (2) approving Mr. Grandhi’s selection of
8 Kahn Swick & Foti, LLC (“KSF”) as Lead Counsel; and (3) granting other such relief as the Court
9 may deem just and proper.

10 This Motion is made on the grounds that Mr. Grandhi believes he is the most “adequate
11 plaintiff” as defined in the PSLRA because he: (1) possesses the largest financial interest in the relief
12 sought by the class; (2) satisfies the typicality and adequacy requirements of Fed. R. Civ. P. 23 (“Rule
13 23”), and (3) will fairly and adequately represent the Class.

14 Mr. Grandhi further requests that the Court approve his selection of KSF as Lead Counsel for
15 the Class. KSF is a nationally-recognized law firm with significant securities and class action litigation
16 experience and has the resources to effectively prosecute this action.

17 This Motion is based on the accompanying Memorandum of Points and Authorities, the
18 Declaration of Kim E. Miller filed herewith, the pleadings and other filings on file in this Action, and
19 such other written or oral argument as may be permitted by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE ISSUES TO BE DECIDED

1. Whether the Court should appoint Raj Grandhi as Lead Plaintiff in this Action pursuant to 15 U.S.C. § 78u-4(a)(3)(B); and

2. Whether the Court should approve Mr. Grandhi's selection of Kahn Swick & Foti, LLC as Lead Counsel for the Class pursuant to 15 U.S.C. § 78u-4 (a)(3)(B)(v).

II. PRELIMINARY STATEMENT

Raj Grandhi (“Grandhi” or “Movant”) respectfully submits this Memorandum of Points and Authorities in support of his motion to: (1) appoint Movant as Lead Plaintiff in this securities class action filed against Align Technology, Inc. (“Align” or the “Company”), Joseph M. Hogan (“Hogan”), and John F. Morici (“Morici”) (Morici and Hogan are collectively referred to herein as the “Individual Defendants”), pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”) and 15 U.S.C. § 78u-4 (a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”); and (2) approve Movant’s selection of the law firm of Kahn Swick & Foti, LLC (“KSF”) as Lead Counsel for the Class.

Movant fully understands his duties and responsibilities to the Class. He is willing and able to oversee the vigorous prosecution of this Action. As described in the Certification and Loss Chart attached to the Declaration of Kim E. Miller in Support of Grandhi's Motion to Be Appointed Lead Plaintiff and to Approve Proposed Lead Plaintiff's Selection of Counsel ("Miller Decl."), Movant has suffered substantial losses totaling \$74,010.00 as a result of his purchases of Align securities between April 24, 2019 and July 24, 2019, inclusive (the "Class Period"). See Miller Decl. at Exhibit A (Grandhi Certification) and Exhibit B (Grandhi Loss Chart). To the best of his knowledge, Movant has sustained the largest losses of any investor(s) seeking to be appointed Lead Plaintiff.

In addition to evidencing the largest financial interest in the outcome of this litigation, Movant's Certification demonstrates his intent to serve as Lead Plaintiff in this matter, including his

1 cognizance of the duties of serving in that role. *See* Miller Decl. at Ex. A. Moreover, Movant satisfies
 2 both the applicable requirements of the PSLRA and Rule 23 of the Federal Rules of Civil Procedure.

3 Mr. Grandhi has also demonstrated his adequacy through his selection of KSF to serve as Lead
 4 Counsel on behalf of the Class. KSF is one of the nation's premier boutique securities litigation law
 5 firms and has the expertise and resources necessary to handle litigation of this complexity and scale.

6 Accordingly, Movant respectfully submits this memorandum of law in support of his motion
 7 for an Order: (1) appointing Movant as Lead Plaintiff in this action; and (2) approving his selection of
 8 the law firm of KSF as Lead Counsel for the Class.

9 **III. PROCEDURAL BACKGROUND**

10 The first lawsuit against Defendants was filed in the Southern District of New York on March
 11 2, 2020. *See City of Roseville Emps.' Ret. Sys., et al, v. Align Technologies, Inc., et al*, No. 20-cv-
 12 01822 (Mar. 2, 2020 S.D.N.Y.) (the "Roseville Complaint"). Pursuant to 15 U.S.C. § 78u-
 13 4(a)(3)(A)(i), on March 2, 2020, the first notice that a class action had been initiated against
 14 Defendants was published on *BusinessWire*, a widely-circulated national business-oriented wire
 15 service, advising members of the proposed Class of their right to move the Court to serve as Lead
 16 Plaintiff no later than May 1, 2020. *See* Miller Decl. at Exhibit C (Statutory Notice). Mr. Grandhi is a
 17 Class member who has timely filed this motion within the 60-day period following publication of the
 18 March 2, 2020 notice. *See* Miller Decl. at Ex. A.

19 On April 16, 2020, following a joint stipulation of the parties, the case was transferred from
 20 the Southern District of New York to the Northern District of California, San Francisco Division.

21 **IV. FACTUAL BACKGROUND¹**

22 Defendant Align, a medical device company headquartered in San Jose, California and
 23 incorporated under the laws of Delaware, designs, manufactures, and markets devices to treat
 24 misaligned teeth. The Company's principal products are the Invisalign clear dental aligners

26 ¹ These facts were derived from the *Roseville Complaint*, and all "¶" references herein are to the
 27 *Roseville Complaint*.

1 (“Invisalign aligners”) and the iTero® (“iTero”) intraoral scanners, which are used to create digital
 2 imagery of patients’ teeth for the purposes of diagnosing misalignment and fitting Invisalign aligners.
 3 ¶20. At all relevant times, Defendant Hogan served as Align’s President and Chief Executive Officer
 4 (“CEO”), as well as a member of the Company’s Board of Directors. ¶11. At all relevant times,
 5 Defendant Morici served as Align’s Chief Financial Officer (“CFO”) and Vice President of Global
 6 Finance. ¶12.

7 During the Class Period, Defendants made numerous false and misleading statements about
 8 the Company’s growth and future prospects in the Asia Pacific (“APAC”) market, especially in China,
 9 which was purported to be “the #2 largest market in [the] Align world.” ¶¶22, 27. For example, the
 10 Company’s quarterly report on Form 10-Q for the first quarter of 2019 (“Q119 10-Q”) states “on a
 11 year-over-year basis, our International Invisalign volume increased 38.5% driven primarily by
 12 increased adoption as well as expansion of our customer base in both the EMEA and APAC regions.”
 13 ¶33. Additionally, during a conference call with investors and analysts on April 24, 2019, Defendant
 14 Hogan touted the Company’s “strong growth from nearly all country markets [in the APAC region]
 15 led by China” and spoke in detail about the Company’s various marketing and educational campaigns
 16 that were purportedly increasing the market for Invisalign aligners in China. ¶¶29, 30. During this
 17 same call, Defendant Morici told investors that Align expected the next quarter’s revenues to be up
 18 “approximately 20% - 22% year-over-year,” partially due to stronger demand in the APAC region.
 19 ¶31. Beginning in mid-May 2019, Defendants Hogan and Morici attended a series of conferences
 20 hosted by securities research divisions of various financial institutions, and at each of these
 21 conferences, the Individual Defendants made materially false and misleading statements about the
 22 strength of the Company’s business in China. ¶¶35-46.

23 Defendants’ statements about Align’s success in the APAC region were materially false and
 24 misleading because Defendants failed to disclose that the Company was experiencing a significant
 25 downturn in sales of and demand for Invisalign aligners in China. The truth began to be revealed on
 26 July 24, 2019 when Defendants issued a press release announcing Align’s financial results for the
 27

1 second quarter of 2019, including that “total Invisalign case shipments were lower than expected,
 2 primarily due to a softness in China related to a tougher consumer environment.” ¶48. During a
 3 conference call on the same day, an incredulous analyst asked why these results were so starkly
 4 contrasted with what Hogan and Morici had been telling the market: “you guys were at a lot of
 5 conferences through mid-June with the message that everything seemed okay.” ¶49. Defendant Hogan
 6 admitted to knowing about the declining sales, but he continued to make the representations because
 7 he was hoping sales would increase by the end of the quarter. ¶49. Align’s stock price plunged as a
 8 result of this news. From a market closing price of \$275.16 per share on July 24, 2019, the Company’s
 9 revelations concerning its deteriorating business in China caused the stock to drop \$74.26 per share to
 10 a closing price of \$200.90 per share on July 25, 2019. As a result of Defendants’ wrongful acts and
 11 omissions, the Class Members in this case have suffered significant losses and damages. ¶¶52-53

12 V. ARGUMENT

13 1. Movant is the Presumptive “Most Adequate Plaintiff” and the Court 14 Should Appoint Him Lead Plaintiff

15 The PSLRA governs the appointment of a lead plaintiff for “each private action arising under
 16 [the Securities Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil
 17 Procedure.” 15 U.S.C. § 78u-4(a)(3)(B). It provides that, within 20 days of the filing of the action, the
 18 plaintiff is required to publish notice in a widely circulated business- oriented publication or wire
 19 service, informing class members of their right to move the Court, within sixty (60) days of the
 20 publication, for appointment as lead plaintiff. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i); *see generally In re*
SolarCity Corp. Sec. Litig., No. 16-CV-04686-LHK, 2017 U.S. Dist. LEXIS 11553, at *8 (N.D. Cal.
 21 Jan. 25, 2017).

22 Under 15 U.S.C. § 78u-4(a)(3)(B)(i), the Court must then consider any motion made by class
 23 members and appoint as lead plaintiff that movant the Court determines to be most capable of
 24 adequately representing the interests of class members. *See generally SolarCity*, 2017 U.S. Dist.
 25 LEXIS 11553 at *8-9. Further, the PSLRA establishes a rebuttable presumption that the “most
 26 adequate plaintiff” is the person that:

1 (aa) has either filed the complaint or made a motion in response to a notice
 2 [published by a complainant];
 3 (bb) in the determination of the court, has the largest financial interest in the relief
 4 sought by the class; and
 5 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 6 Procedure.

7 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

8 Once it is determined who among the movants seeking appointment as lead plaintiff is the
 9 presumptive lead plaintiff, the presumption can be rebutted only upon proof by a class member that
 10 the presumptive lead plaintiff: “(aa) will not fairly and adequately protect the interests of the class; or
 11 (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the
 12 class.” 15 U.S.C. § 78u-4 (a)(3)(B)(iii)(II).

13 Two leading Circuit Courts have directly addressed the procedural standards applicable to the
 14 PSLRA lead plaintiff process – the Ninth Circuit, in *Herrgott v. U.S. Dist. Court for the N. Dist. of*
Cal. (In re Cavanaugh), 306 F.3d 726, 729-31 (9th Cir. 2002), and the Third Circuit, in *In re Cendant*
Corp. Litig., 264 F.3d 201, 262-68 (3d Cir. 2001).² After extensive analyses, both courts concluded
 15 the PSLRA’s statutory framework sets out a mandatory, strict, and sequential three-step process:

16 First, the court must confirm that proper notice has been disseminated pursuant to the
 17 PSLRA. *See Cavanaugh*, 306 F.3d 726, 729-31; *accord* 15 U.S.C. §§ 78u-4(a)(3)(A)(i).

18 Second, to identify the “most adequate plaintiff,” the PSLRA provides that “the court shall
 19 adopt a presumption that the most adequate plaintiff...is the person or group of persons that...has the
 20 largest financial interest in the relief sought by the class...and otherwise satisfies the requirements of

21
 22
 23
 24 ² Courts within this Circuit have routinely cited *Cendant*. *See, e.g., In re Cohen v. United States Dist. Court for the N. Dist. of Cal.*, 586 F.3d 703, 711-12 (9th Cir. 2009); *Markette v. Xoma Corp.*, No. 15-cv-03425-HSG, 2016 U.S. Dist. LEXIS 63701, at *8 (N.D. Cal. May 13, 2016); *Norfolk Cty. Ret. Sys. v. Solazyme, Inc.*, No. 15-cv-02938-HSG, 2015 U.S. Dist. LEXIS 138654, at *5-6 (N.D. Cal. Oct. 8, 2015); *In re Taleo Corp. Sec. Litig.*, No. C 09-00151 JSW, 2009 U.S. Dist. LEXIS 14372, at *5-6 (N.D. Cal. Feb. 9, 2009).

1 Rule 23.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). During this step, the court must “compare the financial
 2 stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit.”
 3 *Cavanaugh*, 306 F.3d at 729-30. The court “must then focus its attention on *that* plaintiff and
 4 determine, *based on the information he has provided in his pleadings and declarations*, whether he
 5 satisfies the requirements of Rule 23(a), in particular those of ‘typicality’ and ‘adequacy.’” *Id.* at 730.³

6 Third, the court may then “give other plaintiffs an opportunity to rebut the presumptive lead
 7 plaintiff’s showing that it satisfies Rule 23’s typicality and adequacy requirements.” *Id.* at 730; *accord*
 8 *Cendant*, 264 F.3d at 262 (“[T]he court first identifies the presumptive lead plaintiff, and then
 9 determines whether any member of the putative class has rebutted the presumption.”). Importantly,
 10 the PSLRA’s presumption may be rebutted “only upon *proof*” that the presumptively most adequate
 11 plaintiff “will not fairly and adequately protect the interests of the class; or...is subject to unique
 12 defenses that render such plaintiff incapable of adequately representing the class.” 15 U.S.C. §78u-
 13 4(a)(3)(B)(iii)(II).

14 Only if, as a result of this three-step process, the presumptive lead plaintiff does not meet the
 15 typicality or adequacy requirements of Rule 23, can the court then proceed to analyze the plaintiff with
 16 the next lower stake. *See Cavanaugh*, 306 F.3d at 729-30. Importantly, though, in coming to this
 17 conclusion, the *Cavanaugh* and *Cendant* courts outlined three critical guidelines:

18 First, to be afforded the presumption in step two, a movant need only make a *prima facie*
 19 showing that it is otherwise typical and adequate – a lower showing than the *proof* required of
 20 competing movants in the adversarial step three. *See Cavanaugh*, 306 F.3d at 731; *Pivotal Software*,
 21 2019 U.S. Dist. LEXIS 195360 at *18 (“The presumptive lead plaintiff need only make a *prima facie*
 22

23 ³ In connection with lead plaintiff appointments, courts have consistently held that the Rule 23
 24 considerations are limited to an evaluation of typicality and adequacy. *See Cavanaugh*, 306 F.3d at
 25 729 n.2; *SolarCity*, 2017 U.S. Dist. LEXIS 11553 at *13 (“This showing need not be as thorough as
 26 what would be required on a class certification motion and only needs to satisfy typicality and
 27 adequacy.”); *Doherty v. Pivotal Software, Inc.*, No. 3:19-cv-03589-CRB, 2019 U.S. Dist. LEXIS
 28 195360, at *18 (N.D. Cal. Nov. 8, 2019) (“The typicality and adequacy requirements of Rule 23 are
 the Court’s main focus in this context.”).

1 showing of its typicality and adequacy.”) (internal quotation marks omitted); *Cendant*, 264 F.3d at
 2 264 (“the court’s initial inquiry as to whether the movant with the largest losses satisfies the
 3 typicality and adequacy requirements need not be extensive,” rather, “the court’s initial inquiry
 4 should be confined to determining whether such movants have stated a *prima facie* case of typicality
 5 and adequacy”).

6 Second, the court’s *prima facie* determinations of typicality and adequacy must be “based on
 7 the information [the movant] has provided *in his pleadings and declarations*,” and rebuttal evidence
 8 introduced by competing movants should specifically not be considered during this second step
 9 presumption analysis. *Cavanaugh*, 306 F.3d at 730. “At step two of the process, when the district court
 10 makes its initial determination, it must rely on the presumptive lead plaintiff’s *complaint and sworn*
 11 *certification; there is no adversary process to test the substance of those claims.*” *Id.* Rather, it is “[a]t
 12 the third stage [that] the process turns adversarial and other plaintiffs may present evidence that
 13 disputes the lead plaintiff’s *prima facie* showing of typicality and adequacy.” *Id.*⁴

14 Finally, the lead plaintiff determination does not depend on the court’s judgment of which
 15 party will be the best lead plaintiff for the class, but rather which movant fulfills the statutory
 16 requirements. “[T]he statutory scheme...provides no occasion for comparing plaintiffs with each other
 17 on any basis other than their financial stake in the case....That the district court believes another
 18 plaintiff may be ‘more typical’ or ‘more adequate’ is of no consequence....[H]e is entitled to lead
 19 plaintiff status, even if the district court is convinced that some other plaintiff would do a better job.”
 20 *Cavanaugh*, 306 F.3d at 732.⁵

21
 22
 23 ⁴ *Accord Cendant*, 264 F.3d at 263-64 (the “threshold determination” of typicality and adequacy
 24 “should be a product of the court’s independent judgment, and [] arguments by members of the
 25 purported plaintiff class as to why it does not should be considered only in the context of assessing
 whether the presumption has been rebutted”)

26 ⁵ *Accord Cendant*, 264 F.3d at 268 (“[T]he question is not whether another movant might do a better
 27 job of protecting the interests of the class than the presumptive lead plaintiff....[T]he inquiry is not a
 relative one.”); *SolarCity*, 2017 U.S. Dist. LEXIS 11553 at *17 (“Absent proof that the lead plaintiff

1 Applying these governing standards, Mr. Grandhi is the presumptive “most adequate plaintiff”
 2 – and thus his motion should be granted and all other competing motions denied – because he: (i)
 3 filed a timely and procedurally complete motion for appointment as Lead Plaintiff in response to a
 4 notice that satisfies the PSLRA’s statutory requirements; (ii) has the largest known financial interest
 5 in the relief sought; and (iii) “otherwise satisfies” the minimal, *prima facie* requirements of Rule 23.

6 **A. Movant Filed a Timely and Procedurally Complete Motion for**
 7 **Lead Plaintiff**

8 Under the PSLRA, the first plaintiff to file an action must publish notice advising members of
 9 the putative plaintiff class of the pending action in a widely circulated national business-oriented
 10 publication or wire service and members of the putative class have sixty days from the date of
 11 publication to move the court to serve as lead plaintiff. *See* 15 U.S.C. § 78u- 4(a)(3)(A)-(B). Here,
 12 Notice was first published in *BusinessWire*⁶ on March 2, 2020, such that the deadline for submission
 13 of applications to be appointed Lead Plaintiff is May 1, 2020. *See* Miller Decl. at Ex. C; Fed. R. Civ.
 14 P. 6. Mr. Grandhi has therefore timely filed his motion.

15 Moreover, with that motion, Mr. Grandhi has signed and submitted the required Certification
 16 in which he certified his trading history during the Class Period and confirmed his willingness and
 17 ability to serve as Lead Plaintiff, thereby satisfying the requirement set forth in 15 U.S.C. § 78u-
 18 4(a)(2)(A). *See* Miller Decl. at Ex. A. Accordingly, Mr. Grandhi has filed a timely and procedurally

21 candidate with the largest financial interest does not satisfy the requirements of Rule 23, said candidate
 22 is ‘entitled to lead plaintiff status.’”) (citing *Cavanaugh*, 306 F.3d at 732).

23 ⁶ Publication by a national press release firm like *BusinessWire* is an adequate means for meeting the
 24 PSLRA statutory requirement that notice be published in a widely circulated national business-
 25 oriented wire service. *See, e.g., SolarCity*, 2017 U.S. Dist. LEXIS 11553 at *11 (publication of Notice
 26 in *BusinessWire* “met the statutory procedural requirements.”); *Westley v. Oclaro, Inc.*, No. C-11-2448
 27 EMC, 2011 U.S. Dist. LEXIS 102249, at *3 (N.D. Cal. Sep. 12, 2011)(“Multiple courts have
 recognized *BusinessWire* as a widely circulated national business-oriented wire service.”); *Mulligan*
v. Impax Labs., Inc., No. C-13-1037 EMC, 2013 U.S. Dist. LEXIS 93119, at *12 (N.D. Cal. July 2,
 2013)(finding publication in *BusinessWire* satisfied the requirements of the PSLRA).

1 complete motion for appointment as Lead Plaintiff in response to a notice that satisfies the statutory
 2 requirements.

3 **B. Movant Possesses the Largest Known Financial Interest in the**
 4 **Relief Sought**

5 During the Class Period, as evidenced by the accompanying signed Certification, Mr. Grandhi
 6 purchased Align securities in reliance upon the materially false and misleading statements and
 7 omissions issued by Defendants and were injured thereby. *See* Miller Decl. at Ex. A. In addition, Mr.
 8 Grandhi incurred a substantial loss on his transactions in Align securities. *See* Miller Decl. at Ex. B.
 9 To the best of its knowledge, Mr. Grandhi thus possesses the largest financial interest in the relief
 10 sought. Therefore, Mr. Grandhi satisfies all of the PSLRA's prerequisites for appointment as Lead
 11 Plaintiff in this action and should be appointed Lead Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(3)(B).

12 **C. Movant "Otherwise Satisfies" the Requirements of Rule 23**

13 In addition to possessing the largest financial interest in the outcome of the litigation, a lead
 14 plaintiff must also "otherwise satisf[y] the requirements of Rule 23." 15 U.S.C. § 78u-
 15 4(a)(3)(B)(iii)(I). As outlined above, to be afforded the presumption in step two, a movant need only
 16 make a *prima facie* showing that it is otherwise typical and adequate. That *prima facie* determination
 17 should be based on the information the movant has provided in its pleadings and declarations only,
 18 and rebuttal evidence introduced by competing movants should specifically not be considered during
 19 this second step analysis. *Supra* §II. Here, Mr. Grandhi easily satisfies these minimal, *prima facie*
 20 requirements.

21 *i. Movant's Claims Are Typical of the Claims of All the Class*
 22 *Members*

23 Under Rule 23(a)(3), typicality exists where "the claims...of the representative parties" are
 24 "typical of the claims...of the class." The typicality requirement of Rule 23(a)(3) is satisfied when the
 25 representative plaintiffs' claims arise from the same course of events that gives rise to claims of other
 26 class members, and when the class members make similar legal arguments to prove the defendant's
 27 liability. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010). The requirement that the

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1 proposed class representatives' claims be typical of the claims of the class is "permissive" and does
 2 not require that the claims be "substantially identical." *Id.*; *In re Heritage Bond Litig.*, MDL No. 02-
 3 1475, 2004 U.S. Dist. LEXIS 15386, at *25 (C.D. Cal. July 12, 2004) ("Courts have held that if the
 4 claims of the named plaintiffs and putative class members involve the same conduct by the defendant,
 5 typicality is established regardless of the factual differences."); *City of Dearborn Heights Act 345*
 6 *Police & Fire Ret. Sys. v. Align Tech., Inc.*, No. 12-CV-06039-LHK, 2013 U.S. Dist. LEXIS 76416,
 7 at *11 (N.D. Cal. May 29, 2013)(finding typicality where members of the purported class "purchased
 8 Align common stock during the Class Period, allegedly in reliance upon Defendants' purported false
 9 and misleading statements, and alleged suffered damages as a result").

10 In this case, the typicality requirement is met because Mr. Grandhi's claims are identical, non-
 11 competing, and non-conflicting with the claims of the other Class members. Mr. Grandhi and all the
 12 other Class Members: (1) purchased Align securities during the Class Period; (2) purchased Align
 13 securities in reliance upon the allegedly materially false and misleading statements issued by
 14 Defendants; and (3) suffered damages by purchasing artificially inflated securities and then suffered
 15 harm when the truth was revealed and the inflation was removed from the unit price. Thus, Mr.
 16 Grandhi's claims are typical of those of other Class members since their claims and the claims of other
 17 Class members resulted from the same illegal practices.

18 **ii. Movant Will Adequately Represent the Class**

19 Under Rule 23(a)(4), the representative parties must also "fairly and adequately protect the
 20 interests of the class." The PSLRA directs this Court to limit its inquiry regarding the adequacy of the
 21 movants to the existence of any conflicts between the interests of the movants, on the one hand, and
 22 the members of the Class, on the other hand. The standard for adequacy of representation under Rule
 23(a)(4) is met by: (1) the absence of potential conflicts between the named plaintiff and the other
 24 class members; and (2) if the proposed class representative's choice of counsel can prosecute
 25 vigorously on behalf of the class. *See* 15 U.S.C. § 78u-4(a)(3)(B).

1 Here, Mr. Grandhi is an adequate representative of the Class. As evidenced by the injuries
 2 suffered by Mr. Grandhi, who purchased Align securities at prices that were artificially inflated by
 3 Defendants' materially false and misleading statements and was harmed when the truth was revealed
 4 and the artificial inflation was removed from the price of those securities, his interests are clearly
 5 aligned with the members of the Class, and there is no evidence of any antagonism between Mr.
 6 Grandhi's interests and those of the other members of the Class. Furthermore, Mr. Grandhi has retained
 7 proposed lead counsel that is highly qualified, experienced, and able to conduct this complex litigation
 8 in a professional manner. Thus, Mr. Grandhi *prima facie* satisfies the typicality and adequacy
 9 requirements of Rule 23 for the purposes of this motion.

10 **2. The Court Should Approve Movant's Choice of Lead Counsel**

11 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v), proposed lead plaintiffs shall, subject to court
 12 approval, select and retain counsel to represent the class. Courts have refrained from disturbing lead
 13 plaintiffs' choice of counsel unless it is necessary to "protect the interests of the class." *In re Lucent*
 14 *Techs. Sec. Litig.*, 194 F.R.D. 137, 155 (D.N.J. 2000) (citing Conference Report on Securities
 15 Litigation Reform, H.R. Rep. No. 369, 104th Congress, 1st Sess. 31, *reprinted in* 1995 U.S.C.C.A.N.
 16 679, 685); *see also Cavanaugh*, 306 F.3d at 734 ("The choice of counsel has traditionally been left to
 17 the parties....Selecting a lawyer in whom a litigant has confidence is an important client prerogative
 18 and we will not lightly infer that Congress meant to take away this prerogative from securities
 19 plaintiffs. And, indeed, it did not.") (internal citations removed).

20 Here, Mr. Grandhi has selected KSF to be Lead Counsel for the Class. As reflected in its firm
 21 resume, KSF is more than qualified to work as Lead Counsel to prosecute the claims of the Class.
 22 With lawyers in Louisiana, New York, and California dedicated to the practice of class action and
 23 individual investor securities and corporate governance litigation, KSF is one of the nation's premier
 24 boutique securities litigation law firms. KSF has represented stockholders as lead or co-lead counsel
 25 in numerous class and derivative litigations, many of which have resulted in substantial recoveries on
 26 behalf of stockholders, amounting to hundreds of millions of dollars. *See* Miller Decl. at Exhibit D
 27 (KSF Firm Resume).

1 Notably, KSF has achieved numerous litigation successes serving as lead, co-lead, or executive
 2 committee counsel in other securities class actions. *See Id.* (citing *In Re Health Ins. Innovations*, No.
 3 17-cv-2186 (M.D. Fla.) (denying in part defendants' motion to dismiss securities class action on June
 4 28, 2019); *Shanawaz v. Intellipharmaceutics Int'l Inc., et al.*, No. 17-cv-5761 (S.D.N.Y.) (denying in
 5 part defendants' motion to dismiss securities class action on December 17, 2018); *Dougherty v.*
 6 *Esperion Therapeutics, Inc., et al.*, No. 17-cv-1701 (6th Cir.) (reversing and remanding lower court's
 7 dismissal of securities class action on September 27, 2018.)).

8 KSF also served as special counsel and court-appointed Co-Counsel to the lead plaintiff in *The*
 9 *Erica P. John Fund, Inc. v. Halliburton Company, et al.*, No. 02-cv-1152 (N.D. Tex.), which settled
 10 for \$100 million. Prior to settlement, the *Halliburton* case itself had twice been to the United States
 11 Supreme Court. In the first instance, plaintiffs won 9-0. In the second instance, the Halliburton
 12 defendants challenged the "fraud on the market theory," the fundamental theory on which all class
 13 action securities litigation rests. Despite the Halliburton defendants' protestations, the Supreme Court
 14 sided with the plaintiffs and upheld that theory. As the aforementioned cases demonstrate, KSF
 15 possesses the requisite experience and knowledge litigating complex securities cases.

16 Thus, the Court may be assured that, in granting this motion, the Class will continue to receive
 17 legal representation of the highest caliber.

18 **VI. CONCLUSION**

19 For all of the foregoing reasons, Raj Grandhi respectfully requests that this Court: (1) appoint
 20 Mr. Grandhi to serve as Lead Plaintiff in this consolidated action; (2) approve Mr. Grandhi's selection
 21 of KSF as Lead Counsel for the Class; and (3) grant such other and further relief as the Court may
 22 deem just and proper.

1 DATED: May 1, 2020

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18 *Counsel for Lead Plaintiff Movant Raj Grandhi*
19 *and Proposed Lead Counsel for the Class*

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28 NOTICE OF MOTION AND MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF
LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF

CASE NO. 20-CV-02897-MMC

1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury that on May 1, 2020, I authorized the electronic filing
3 of the foregoing with the Clerk of the Court using the CM/ECF system which will send a Notice of
4 Electronic Filing to all CM/ECF participants. I further certify that I mailed the foregoing document
5 and the notice of electronic filing via U.S. first-class mail to any non-CM/ECF participants.

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8 */s/ Kim E. Miller* _____
9 Kim E. Miller
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28 CASE NO. 20-CV-02897-MMC

NOTICE OF MOTION AND MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF
LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF